

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 24, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Maui

Issuance of Right-of-Entry Permit to the AOA Maui Sunset onto Unencumbered Government Lands to Remove Seaweed from Shoreline, Waiohuli-Keokea, Maui; Tax Map Key: (2) 3-9-001: Seaward of 001.

APPLICANT:

The Association of Apartment Owners (AOAO) of Maui Sunset, a Domestic Nonprofit Corporation

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiohuli-Keokea, South Maui, identified by Tax Map Key: (2) 3-9-001: Seaward of 001, as shown on the attached map labeled Exhibit A.

AREA:

To be Determined on an "As Needed" basis.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES __ NO X

CHARACTER OF USE:

Remove Seaweed from Shoreline

TERM OF RIGHT-OF-ENTRY:

One (1) Year

CONSIDERATION:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(1)]." See attached exemption notification.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO __
Registered business name confirmed:	YES <u>X</u>	NO __
Applicant in good standing confirmed:	YES <u>X</u>	NO __

REMARKS:

Since the Early 1990's, the private land owners adjacent to the subject area, the County of Maui and State of Hawaii have been looking for ways to resolve problems related to the seasonal accumulation of seaweed (algae) along the shoreline fronting the lands known as Waipuiani Beach Reserve, further identified as areas seaward of TMK (2) 3-9-001:001. The cause of the buildup is believed to be from a variety of sources that includes near shore landscaping activities at Waipuiani Beach Reserve and the upwelling of nutrients being released into near shore waters from gray water being injected into the ground by the County sewer treatment plant in South Maui.

In 2011 and 2012, the area experienced a significant decrease in the accumulation of seaweed along the shoreline. This fact led the State Department of Land and Natural Resources (DLNR) to issue a cease and desist order to the operator of a motorized backhoe that was conducting beach clearing activities on a daily basis. One of the major problems of the clean-up

efforts was the fact that more than 50% of the material being collected consisted of sand and coral rubble which resulted in significant changes to the beach profile. Furthermore, collected algae was being stockpiled and later spread out rather than being removed from the area. Maintaining algae “within” the system retains high levels of nutrients which further contributes to the accumulation of algae along the shoreline.

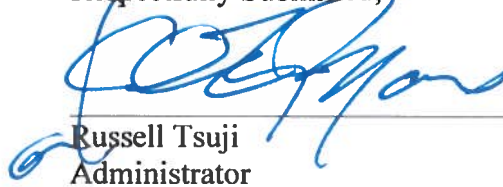
Since the stop work order issued in February of 2012, we have not experienced an accumulation of algae growth that would warrant, according to the DLNR Division of Aquatic Resources (DAR), the removal of algae from the system via motorized vehicles. However, the applicant would like to be prepared to respond to potential re-accumulation of algae and has suggested a seaweed management plan for its removal. DAR and representatives of the County of Maui Coastal Zone Management program agree that we should have a plan of action, but strongly emphasized that the decision to allow clean-up activities to begin and end shall be a function of the responsible government agencies as opposed to the condo association in which this ROE entry would be issued. Therefore, staff recommends the issuance of a Right-of-Entry permit for one (1) year to the AOA Maui Sunset for removal of accumulated seaweed from the subject area, provided that the applicant obtain the written concurrence of the Maui District Land Office and the Division of Aquatic Resources prior to entry of motorized vehicles onto the subject land and for removal of seaweed from the beach.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a right-of-entry permit to the Association of Apartment Owners (AOAO) of Maui Sunset covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. AOA Maui Sunset shall obtain the written concurrence of the Maui District Land Office and the Division of Aquatic Resources prior to entry of motorized vehicles onto the subject land and for removal of seaweed from the beach;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

- D. Authorize the Chairperson to issue future right-of-entries to the Applicant in relation to Remove Seaweed from the Shoreline.

Respectfully Submitted,



Russell Tsuji
Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



LAND DIVISION

COMPLAINT FORM

1. Obtain the following information (minimum) from initial call:

Date/Time Of Call: 2/22/2012, 2:40 p.m.

Received By: Larry Pacheco

Name of Caller: Elaine Bowes Telephone: 875-8222

Address/Location: Waipuilani Beach, fronting Waipuilani Park, Kihei, HI.

Tax Map Key: Seaward of TMK: (2) 3-9-001:001 and (2) 3-9-007:005.

Additional Information (fully describe the complaint or problem):

On 2/22/2012 at 2:40 p.m., I received a call from Ms. Elaine Bowes who stated that she wanted something done about the use of heavy equipment along Waipuilani Beach. Ms. Bowes related that it was her understanding that the operator of the tractor was contracted to clean seaweed from the shoreline when it became a nuisance. Her concern is now that there has been no seaweed problem along the shoreline for over the past year or so, why is he still using a large tractor to groom the beach. She also stated that due to the amount of pedestrian traffic that walks along the beach on a daily basis during the morning hours, she is concerned that someone could get hit or hurt by the tractor because he has no one guiding him while he works and the work area is not blocked off by any type of safety markings. Ms. Bowes further stated that she feels that although he and the people contracting him to groom the beach thinks he may be doing a good job out there, she believes he is causing a negative impact to the area and it needs to be stopped.

Will the caller agree to allow us to release his/her name and telephone number, so the parties concerned can follow-up with the complaint? Yes

2. Conduct Internal Review.

- a. Locate area on map(s). Attach tax map.
- b. Determine ownership. Findings and source used to verify (attach documents):
The subject area is a shoreline and falls under the jurisdiction of the State of Hawaii.

3. If area identified is:

Private property

Notify caller that complaint or problem involves lands privately owned, provide name of owner(s).

Date called: _____
Spoke to: _____

LD Staff name: _____

State lands under DLNR:

a. Provide report of what action taken. If site visit conducted, include photographs.

On 2/23/2012 a site inspection was conducted of the shoreline fronting Waipuilani Park at TMK: (2) 3-9-001:001. During my inspection, I observed no seaweed along the shoreline from the former staging area fronting the parks restroom facility down to the far north end of the beach fronting the Koa Lagoon condominium complex. Portions of the beach appeared to have been groomed or scrapped to create a smooth leveled off surface. While walking the shoreline I observed a backhoe tractor being operated along the sand beach. As I approached the tractor, I observed its front bucket to contain a small amount of sand and coral rocks inside of it. Contact was then made with the operator who identified himself as Joe Estrella. Mr. Estrella related that he has been cleaning this beach for the past 26 years and is contracted by several of the condominium complexes in the area, such as the Maui Sunset, Menehune Shores, the Maui Schooner Resort, the Luana Kai AOA, and the Koa Lagoon condominiums. Upon asking Mr. Estrella if he had permits from the State or County to conduct the work has been doing, he related that a Mr. Leonard Costa from the County of Maui gave him permission and had taken care of all the permits and paperwork. Mr. Estrella then related that because there is no seaweed at this time, he simply grooms the beach and tries to maintain the embankment to prevent erosion. Upon asking him why some portions of the beach was not groomed and the dune was left in its natural state, he related that at those areas he is not contracted by the mauka condo owners, so he leaves it alone. He further stated that he only cleans the area where he is contracted to perform his services.

Upon conducting a check with Rowena Dagdag-Andaya of the County of Maui, she related that she had checked with their Public Works Department and no permits were issued to Mr. Estrella for the work that he was conducting at Waipuilani Beach.

Checks were also conducted with staff from the State's Division of Aquatic Resources who also indicated that they also have received complaints regarding this same issue. Per Aquatics staff, they felt that there was no reason for the tractor to be operating at that location because there was no longer a seaweed problem along the shoreline.

A check was also conducted with Tara Miller of the County of Maui's Planning Department. Miller indicated that she had also received a complaint regarding this issue, but had not yet had an opportunity to conduct a site visit. Upon reviewing photos taken at the time of my inspection, she indicated that it was not advisable to remove coral from the beach area and that it may lead to long term degradation. She further indicated that changing the composition of the dunes will likely do more harm than good and is probably offering a false sense of security. Furthermore, dunes should remain sandy to supply sand to the beach during high waves, thereby reducing erosion and flooding.

Refer to attached photo report of the subject shoreline area and its adjacent dunes.

- b. If lands are under jurisdiction of non-Land Division (e.g., DOFAW, State Parks, etc.), notify applicable DLNR agency, give location information and caller information.

Date called: _____ LD Staff name: _____
Spoke to: _____



State lands under EO or owned by another government agency:

Notify applicable State agency; give location information and caller information

Date called: _____ LD Staff name: _____
Spoke to: _____

4. Obtain approval from Administrator or Assistant Administrator (or District Land Agent) to close file. [The Administrator's approval will be required if the complaint may lead to a lawsuit, loss of life, etc.]

Recommendation: Cease and Desist notices will be sent to Mr. Joe Estrella and the condominium associations which were contracting him for his services along the shoreline of Waipuilani Beach. In the event clean up should be required in the future proper permits should be applied for and obtained prior to the starting any work along the shoreline.

Submitted by: Larry Pacheco  Date: 2/24/2012
Approved by:  Date: 2/24/12

5. Maintain this form and all related documents in District files.

Cc: Maui DOCARE
County of Maui - Planning Dept. Attn: Tara Miller
County of Maui - Public Works. Attn: Rowena Dagdag-Andaya
District File

Photos taken: 2/23/2012

Shoreline area fronting Waipuilani Park. Seaward of TMK: (2) 3-9-001:001



Photo of area where seaweed that was removed from the shoreline was stockpiled until either it was hauled away or naturally turned into compost.



View of the shoreline looking south. Note no seaweed or debris along the sand beach.



View of the shoreline facing in the northerly direction from the stockpile area. Note again that there is no seaweed or debris on the sand beach.



Photo of tractor being operated by Mr. Joe Estrella along the Waipuilani Beach shoreline.

Photos taken: 2/23/2012



Photo of sand and coral rocks from the shoreline within the tractor's bucket at the time contact was made with Mr. Estrella.

Shoreline area fronting Waipuilani Park, Seaward of TMK: (2) 3-9-001:001



Photo of dune area that has been modified by Mr. Estrella through the use of his tractor.

Photos taken: 2/23/2012

Shoreline area fronting Waipuilani Park, Seaward of TMK: (2) 3-9-001:001



Photo depicts an area of the sand dune where it has been modified and groomed by Estrella. Note the coral rocks from the beach has been pushed up to form a slope.



Picture of sand and coral rocks that has been pushed up into a pile along the dune.

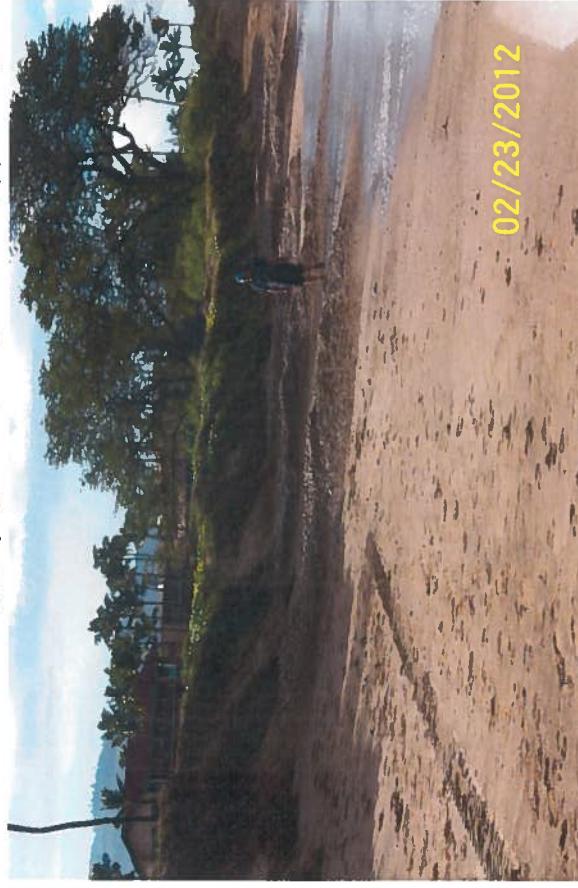


Photos of the shoreline where it is not maintained by Estrella because the inland property owners are not paying for his services. Note the natural dune and coral rocks along the shoreline in its natural state.



Photos taken: 2/23/2012

Shoreline area fronting Waipuilani Park, Seaward of TMK: (2) 3-9-001:001



Photos of the dune and shoreline where Mr. Estrella does not use his tractor to groom. This area remains in its natural condition and the beach process is allowed to take its natural course.



View of the north end of Waipuilani Beach where it is maintained and groomed by Mr. Estrella.

Photos taken: 2/23/2012

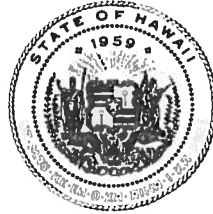


Shoreline area fronting Waipuilani Park, Seaward of TMK: (2) 3-9-001:001



Photos of the natural shoreline area where it is not groomed by Mr. Estrella. Note the natural contour of the beach and dune at this location.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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ENVIRONMENTAL
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of Right-of-Entry Permit to the AOA Maui Sunset onto Unencumbered Government Lands to Remove Seaweed from Shoreline.

Project Location: Waiohuli-Keokea, Maui; TMK (2) 3-9-001: Seaward of 001.

Project Description: Applicant proposes to remove algae from shoreline pursuant to accumulation and subject to 30 day written notification to the Department of Land and Natural Resources (DLNR) and issuance of a Right-of-Entry Permit by DLNR.

Consulted Parties: DLNR - Office of Conservation and Coastal Lands, DLNR - Division of Aquatic Resources, County of Maui - Coastal Zone Management Program

Exemption Class No.: In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(1)]."

Recommendation: It is recommended that the Board find that the issuance of a Right-of-Entry to AOA Maui Sunset will have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

A handwritten signature in black ink, appearing to read "William J. Aila, Jr.", is written over a horizontal line.

William J. Aila, Jr., Chairperson

5/13/13

Date